

# CITY OF MILWAUKEE

Form CA-43

GRANT F. LANGLEY  
City Attorney

RUDOLPH M. KONRAD  
PATRICK B. McDONNELL  
LINDA ULISS BURKE  
Deputy City Attorneys



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PATRICIA A. FRICKER  
HEIDI WICK SPOERL  
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DAWN M. BOLAND  
KATHRYN M. ZALEWSKI

Assistant City Attorneys

February 9, 2004

To the Honorable Common Council  
of the City of Milwaukee  
Room 205 - City Hall

Re: Communication from Attorney Laurie A. Eggert, Eggert & Cermele, S.C.  
for legal fees for Police Officers Todd Smolen and James Bryce.  
C.I. File No. 02-S-83; EC No. 1751

Dear Council Members:

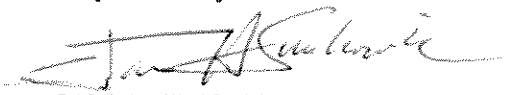
Returned herewith is a document filed by Attorney Laurie Eggert for attorney's fees for representing Police Officers Todd Smolen and James Bryce. The claim is in the amount of \$512.50 including \$6.50 in disbursements for 4.60 hours of service billed at the rate of \$110.00 per hour. We ask that this matter be introduced and referred to the Committee on Judiciary & Legislation.

We have reviewed this claim and advise that in our opinion, the time spent was reasonable. Legal representation was occasioned by a criminal investigation. No criminal charges were brought against the police officers on whose behalf this claim was filed.

As we have advised you under similar circumstances in the past, the Common Council has discretion to reject this claim or to pay it in whole or in part. Wis. Stat. § 895.35, *Bablitch and Bablitch v. Lincoln County*, 82 Wis. 2d 574 (1978).

Very truly yours,

GRANT F. LANGLEY  
City Attorney

  
JAN A. SMOKOWICZ  
Assistant City Attorney  
JAS:enm

Enc.  
77749/ 1032-2002-714

**EGGERT & CERMELE, S.C.**

*Attorneys at Law*

Laurie A. Eggert  
Jonathan Cermele

1840 North Farwell Avenue  
Suite 303  
Milwaukee, Wisconsin 53202  
(414) 276-8750  
FAX (414) 276-8906

February 27, 2002

Mr. Ronald D. Leonhardt  
Milwaukee City Clerk  
200 East Wells Street, Room 800  
Milwaukee, WI 53202

**RE: MPD Criminal Investigation of POs Todd Smolen and James Bryce  
Allegations Regarding Tiombe McElarth  
Date of Incident: May 28, 2001  
Location of Incident: 6333 West Florist Avenue  
EC No.: 1751**

Dear Mr. Leonhardt:

The above-named police officers have retained us to represent them in connection with the above-referenced matter.

Consistent with its policy, the City Attorney's Office has refused to represent them, and as they were performing the duties of their office at the time of the events giving rise to the incident, the claim is hereby made on their behalf for the indicated legal fees. This incident involved resisting/obstructing.

The MPD initiated a criminal investigation in which the officers initially declined to give a statement without counsel. When they requested counsel, IAD compelled the officers to give statements concerning the incident after issuing PI-21s. Later, the MPD decided not to issue criminal charges against the officers. Attached is a copy of the clearance report and an itemization of the time and services rendered.

Sincerely,

EGGERT & CERMELE, S.C.

*Laurie A. Eggert*  
Laurie A. Eggert  
Attorney at Law

2/9/04

O.K.  
JAS

Letter 2276

JC/ldl  
SMOBRYCE M

02 FEB 28 11 00 AM '02

**EGGERT & CERMELE, S.C.**

*Attorneys at Law*

Laurie A. Eggert  
Jonathan Cermele

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February 27, 2002

Mr. Ronald D. Leonhardt  
Milwaukee City Clerk  
800 City Hall  
200 East Wells Street  
Milwaukee WI 53202

RE: MPD Criminal Investigation re: Tiombe McElarth  
Regarding: POs Todd Smolen and James Bryce  
Date of Incident: May 28, 2001  
Location of Incident: 6333 West Florist Avenue

Professional services

|   | <u>Hours</u> |               |
|---|--------------|---------------|
| 06/27/01 Telephone call PO Smolen regarding new criminal investigation; open file; memo to file; meeting with PO Smolen at IAD; attend PO Smolen's PI-21 statement; travel; memo to file. | 1.90         |               |
| 07/26/01 Review of file; meeting with PO Bryce at IAD; attend PO Bryce's PI-21 statement; travel; memo to file.   | 1.70         |               |
| 08/02/01 Telephone call to and from IAD; correspondence to clients; correspondence to MPD Open Records.   | 0.50         |               |
| 01/14/02 Review of correspondence from MPD Open Records; correspondence to clients; close file.   | 0.50         |               |
|   |              | <u>Amount</u> |
| For professional services rendered  | 4.60         | \$506.00      |

Mr. Ronald D. Leonhardt

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Additional charges:

|                                   | <u>Amount</u>          |
|-----------------------------------|------------------------|
| 01/14/02 MPD Open Records request | 6.50                   |
| Total costs                       | <u>\$6.50</u>          |
| Total amount of this bill         | <u>\$512.50</u>        |
| Balance due                       | <u><u>\$512.50</u></u> |

(Rate: \$110.00 per hour)

|                      |                   |                                |                |          |
|----------------------|-------------------|--------------------------------|----------------|----------|
| INCIDENT INFORMATION | INCIDENT          | DATE OF INCIDENT               | DATE OF REPORT | REP CON# |
|                      | BATTERY           | 05-28-01                       | 08-02-01       |          |
|                      | VICTIM            | LOCATION OF INCIDENT (ADDRESS) |                | DIST.    |
|                      | MCELRAETH, TIOMBE | 6333 W. FLORIST                |                | 4        |
|                      | VICTIM'S ADDRESS  | REPORTED BY                    |                |          |
|                      | 6333 W. FLORIST   | SAME                           |                |          |

- PROPERTY CODES --- LIST CODE FOR EACH ITEM OF PROPERTY IN "CODE #\* COLUMN" ---
- |                   |                    |                       |                          |                        |                   |
|-------------------|--------------------|-----------------------|--------------------------|------------------------|-------------------|
| 01-AIRCRAFT       | 09-CREDIT CARDS    | 15-HEAVY EQUIPMENT    | 21-NEGOTIABLE INSTRUMENT | 27-RECORD/AUDIO VISUAL | 34-STRUCT-STORAGE |
| 02-ALCOHOL        | 10-DRUGS/NARCOTICS | 16-HOUSEHOLD GOODS    | 22-NONNEGOT INSTRUMENT   | 29-STRUCT-SINGLE DWL   | 35-STRUCT-OTHER   |
| 04-BICYCLES       | 11-DRUG/NARC EQUIP | 17-JEWELRY/PREC METAL | 23-OFFICE EQUIPMENT      | 30-STRUCT-OTHER DWL    | 36-TOOLS          |
| 06--CLOTHES/FURS  | 12-FARM EQUIPMENT  | 18-LIVESTOCK          | 77-OTHER                 | 31-STRUCT-OTHER COMM   | 38-VEH/PART/ACC   |
| 07-COMPUTER WARES | 13-FIREARMS        | 19-MERCHANDISE        | 25-PURSE/BAG/WALLET      | 32-STRUCT-INDUST MFG   | 39-WATERCRAFT     |
| 08-CONSUMABLES    | 14-GAMBLING EQUIP  | 20-MONEY              | 26-RADIO/TV/VCR          | 33-STRUCT-PUBLIC       | 99-               |

| QUANT | TYPE OF PROPERTY | DESCRIPTION | SERIAL # | INVENTORY # | CODE # | VALUE |
|-------|------------------|-------------|----------|-------------|--------|-------|
|       |                  |             |          |             |        |       |

|                      |                        |                               |                                   |
|----------------------|------------------------|-------------------------------|-----------------------------------|
| RELATED INCIDENT #'S | EVIDENCE INVENTORY #'S | ADDED PROPERTY ATTACHED PO-14 | TOTAL VALUE RECOVERED PROPERTY \$ |
|----------------------|------------------------|-------------------------------|-----------------------------------|

- USE FOR WEAPONS IN POSSESSION OF PRISONER AT TIME OF ARREST -- CHECK ALL APPLICABLE ITEMS
- |  |  |  |  |   |   |  |
|--|--|--|--|---|---|--|
| 1 2                                    | 1 2                                      | 1 2  | 1 2                                      | 1 2                                     | 1 2                                       | 1 2                                      |
| <input type="checkbox"/> ALTERED STOCK | <input type="checkbox"/> CHROME/NICKEL   | <input type="checkbox"/> HANDGUN             | <input type="checkbox"/> OTHER           | <input type="checkbox"/> REVOLVER       | <input type="checkbox"/> SHOTGUN          | <input type="checkbox"/> OTHER FIREARM   |
| <input type="checkbox"/> AUTOMATIC     | <input type="checkbox"/> DOUBLE BBL      | <input type="checkbox"/> IMPLIED WEAPON      | <input type="checkbox"/> OTHER FIREARM   | <input type="checkbox"/> RIFLE          | <input type="checkbox"/> SIMULATED WEAPON | <input type="checkbox"/> OTHER FIREARM   |
| <input type="checkbox"/> BOLT ACTION   | <input type="checkbox"/> DRUG/NARCOTIC   | <input type="checkbox"/> KNIFE/CUTTING INSTR | <input type="checkbox"/> PERSONAL WEAPON | <input type="checkbox"/> SAWED OFF      | <input type="checkbox"/> SINGLE BBL       | <input type="checkbox"/> PERSONAL WEAPON |
| <input type="checkbox"/> BLUE STEEL    | <input type="checkbox"/> EXPLOSIVES      | <input type="checkbox"/> LIQUID GAS          | <input type="checkbox"/> POISON          | <input type="checkbox"/> SEMI AUTO      | <input type="checkbox"/> THROWN OBJECT    | <input type="checkbox"/> POISON          |
| <input type="checkbox"/> BLUNT OBJECT  | <input type="checkbox"/> FIRE/INCENDIARY | <input type="checkbox"/> MOTOR VEHICLE       | <input type="checkbox"/> PUMP ACTION     | <input type="checkbox"/> SHORT/SNUB BBL | <input type="checkbox"/> UNKNOWN          | <input type="checkbox"/> PUMP ACTION     |

|                       |            |     |      |     |               |     |  |
|-----------------------|------------|-----|------|-----|---------------|-----|--|
| ARRESTED #1 LAST NAME | FIRST NAME | MID | RACE | SEX | DATE OF BIRTH | AGE | ETHNIC ORIGIN  |
|                       |            |     |      |     |               |     | <input type="checkbox"/> HISPANIC<br><input type="checkbox"/> NON-HISPANIC |

|         |      |       |        |        |       |      |      |
|---------|------|-------|--------|--------|-------|------|------|
| ADDRESS | CITY | STATE | HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---------|------|-------|--------|--------|-------|------|------|

|       |   |
|-------|---|
| ALIAS | SCARS, MARKS, MOLES, DEFORMITIES, AMPUTATIONS, FACIAL HAIR, SKINTONE, TATTOOS, PECULIARITIES ETC. |
|-------|---|

|            |             |                               |
|------------|-------------|-------------------------------|
| I.D. DIV # | SOC. SEC. # | ADDED WEAPON INFO ARRESTED #1 |
|------------|-------------|-------------------------------|

|                    |     |              |     |              |     |                    |                     |                |  |
|--------------------|-----|--------------|-----|--------------|-----|--------------------|---------------------|----------------|--|
| RESIDENT OF COUNTY | Y N | GANG RELATED | Y N | DRUG RELATED | Y N | LOCATION OF ARREST | DATE/TIME OF ARREST | TYPE OF ARREST | <input type="checkbox"/> ORDERED IN/CITED<br><input type="checkbox"/> W/WARR/SUSP CARD<br><input type="checkbox"/> ALL OTHER ARRESTS |
|--------------------|-----|--------------|-----|--------------|-----|--------------------|---------------------|----------------|--|

|         |   |     |
|---------|---|-----|
| CHARGES | POSSESSED SUSPECTED DRUGS AT TIME OF ARREST | Y N |
|---------|---|-----|

|                       |            |     |      |     |               |     |  |
|-----------------------|------------|-----|------|-----|---------------|-----|--|
| ARRESTED #2 LAST NAME | FIRST NAME | MID | RACE | SEX | DATE OF BIRTH | AGE | ETHNIC ORIGIN  |
|                       |            |     |      |     |               |     | <input type="checkbox"/> HISPANIC<br><input type="checkbox"/> NON-HISPANIC |

|         |      |       |        |        |       |      |      |
|---------|------|-------|--------|--------|-------|------|------|
| ADDRESS | CITY | STATE | HEIGHT | WEIGHT | BUILD | HAIR | EYES |
|---------|------|-------|--------|--------|-------|------|------|

|       |   |
|-------|---|
| ALIAS | SCARS, MARKS, MOLES, DEFORMITIES, AMPUTATIONS, FACIAL HAIR, SKINTONE, TATTOOS, PECULIARITIES ETC. |
|-------|---|

|            |             |                               |
|------------|-------------|-------------------------------|
| I.D. DIV # | SOC. SEC. # | ADDED WEAPON INFO ARRESTED #1 |
|------------|-------------|-------------------------------|

|                    |     |              |     |              |     |                    |                     |                |  |
|--------------------|-----|--------------|-----|--------------|-----|--------------------|---------------------|----------------|--|
| RESIDENT OF COUNTY | Y N | GANG RELATED | Y N | DRUG RELATED | Y N | LOCATION OF ARREST | DATE/TIME OF ARREST | TYPE OF ARREST | <input type="checkbox"/> ORDERED IN/CITED<br><input type="checkbox"/> W/WARR/SUSP CARD<br><input type="checkbox"/> ALL OTHER ARRESTS |
|--------------------|-----|--------------|-----|--------------|-----|--------------------|---------------------|----------------|--|

|         |   |     |
|---------|---|-----|
| CHARGES | POSSESSED SUSPECTED DRUGS AT TIME OF ARREST | Y N |
|---------|---|-----|

| V E H | VEHICLE USED | MAKE | MODEL | TYPE | COLOR | STATE | EXP | TYPE | V.I.N. # |
|-------|--------------|------|-------|------|-------|-------|-----|------|----------|
|       |              |      |       |      |       |       |     |      |          |

|                        |           |       |                   |                   |               |
|------------------------|-----------|-------|-------------------|-------------------|---------------|
| REPORTING OFFICER      | PAYROLL # | LOC # | ASSISTING OFFICER | SUPERVISOR        | TOTAL ARRESTS |
| <i>Michael Carlson</i> | 36620     | 04    |                   | <i>Fr. Mayhew</i> |               |
| DET. MICHAEL CARLSON   | 36620     | 04    |                   |                   |               |

INVESTIGATIVE NARRATIVE:

This report is being dictated by Detective Michael CARLSON, of the Criminal Investigation Unit/Internal Affairs Division (CIU/IAD), day shift.

Investigation revealed that the complainant states that as she exited her vehicle she was confronted by both Officers BRYCE and SMOLEN. She states that both of them attempted to restrain her by grabbing her and she yelled for her boyfriend. She states at this time that P.O. SMOLEN, after grabbing her in the back of the neck, punched her twice in the stomach.

The witness, Tory MARTIN, alleges that when he came out of his apartment both police officers were standing by the complainant. He states that he yelled at them and that P.O. SMOLEN then walked away from the complainant and came toward him holding a can of mace. He states that Officer SMOLEN threatened him and that he, MARTIN, then backed away. He states that Officer SMOLEN then went back to where Officer BRYCE was. He states that it was at this time that he observed Officer BRYCE strike the complainant once in the stomach.

Another witness, Monique WHITE, stated that she observed the incident from across the unlit street and observed numerous squad cars present. She states that she then saw the complainant standing, handcuffed behind her back, by a car. She states that she then saw a lone police officer standing in front of her and that this officer struck her in the stomach.

The complainant was issued a citation for Resisting and on July 18, 2001 pled not guilty to the citation. She is currently awaiting a pre-trial date on September 5, 2001 for this citation.

All the statements by the witnesses and the complainant contradict each other as to who, what, when, and how the alleged incident occurred. The complainant has no injuries and only alleges pain. Due to these facts the complaint has no prosecutable merit and will be cleared as unfounded.

MC:laf 01-198

|  |   |  |
|--|---|--|
| REVIEWING D.A.                             | P.O./DET. ASSIGNED  | COURT CASE NUMBER  |
| FINAL CHARGE                               | DISPOSITION/DATE  | VICTIM NOTIFIED BY   |
| INCIDENT STATUS                            | <input type="radio"/> CLEARED BY ARREST 18 OR OVER<br><input type="radio"/> PARTIAL CLEARANCE BY ARREST<br><input type="radio"/> UNFOUNDED/BASELESS<br><input type="radio"/> NO PROSECUTION DESIRED   | <input type="radio"/> PROPERTY RECOVERED<br><input type="radio"/> WARRANT REFUSED<br><input type="radio"/> ARREST UNDER 18<br><input type="radio"/> A. Detained at MCCC<br><input type="radio"/> B. Ordered in to MCCC DATE: _____<br><input type="radio"/> WAIVED AS AN ADULT                     |
| ----- C.I.B. ADMINISTRATIVE USE ONLY ----- |   |  |
| CLEARED EXCEPTIONALLY                      | <input type="radio"/> A. Death of Offender<br><input type="radio"/> B. Prosecution Declined   | <input type="radio"/> C. Extradition Denied<br><input type="radio"/> D. Refused to Cooperate<br><input type="radio"/> E. Juvenile, no custody<br><input type="radio"/> F. Not Applicable   |
| JUSTIFIABLE HOMICIDE INFORMATION           | <input type="radio"/> A. SUSP ATTKCD PO AND SAME PO KILLED SUSP<br><input type="radio"/> B. SUSP ATTKCD PO AND OTHER PO KILLED SUSP<br><input type="radio"/> C. SUSP ATTKCD CIVILIAN<br><input type="radio"/> D. SUSP ATTEMPTED FLIGHT FROM CRIME | <input type="radio"/> E. SUSP KILLED IN COMMISSION OF CRIME<br><input type="radio"/> F. SUSP RESISTED ARREST<br><input type="radio"/> G. UNABLE TO DETERMINE/NOT ENOUGH<br><input type="radio"/> H. SUSPECT KILLED BY PRIVATE CITIZEN<br><input type="radio"/> I. SUSPECT KILLED BY POLICE OFFICER |

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

DECEMBER 5, 2002

TO: P.O. TODD SMOLEN  
TEU

RE: Receipt of Legal Services from Law Firm of  
Attorney

Attorney Laurie Eggert has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) An incident occurring on MAY 28, 2001
- 2) A citizen's complaint made by TIOMBE MCELARTH
- 3) A police shooting incident occurring on N\A

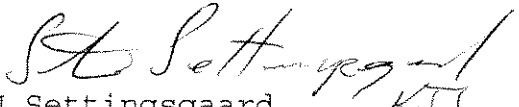
Is this information correct? YES X NO \_\_\_\_\_

Did you receive legal representation in this matter? YES X NO \_\_\_\_\_

Your signature: PO Todd Smolen

Print your name: P.O. TODD SMOLEN #64703

Upon completion, please return this memorandum to the Internal Affairs Division at the Police Academy (Room 325) as soon as possible.

  
Steven M. Settingsgaard  
Police Commander  
Internal Affairs Division

SMS:kjs

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

DECEMBER 5, 2002

TO: P.O. JAMES BRYCE  
TEU

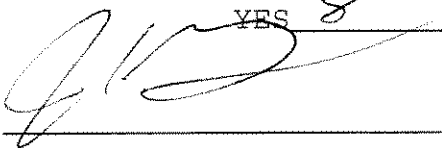
RE: Receipt of Legal Services from Law Firm of  
Attorney

Attorney Laurie Eggert has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) An incident occurring on MAY 28, 2001
- 2) A citizen's complaint made by TIOMBE MCELARTH
- 3) A police shooting incident occurring on N\A

Is this information correct? YES   ✓   NO \_\_\_\_\_

Did you receive legal representation in this matter? YES   ✓   NO \_\_\_\_\_

Your signature: 

Print your name: P.O. JAMES E BRYCE 62918

Upon completion, please return this memorandum to the Internal Affairs Division at the Police Academy (Room 325) as soon as possible.

  
Steven M. Settingsgaard *KJS*  
Police Commander  
Internal Affairs Division

SMS:kjs